

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KENT R DILLARD,

Plaintiff,

2

JOHN DOE JACKSON et al.,

## Defendants.

CASE NO. C12-5168 BHS-JRC

ORDER CONVERTING A MOTION  
FOR JUDGMENT ON THE  
PLEADINGS TO A SUMMARY  
JUDGMENT MOTION

This 42 U.S.C. §1983 civil rights action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges Rules MJR 1, MJR 3, and MJR 4.

Defendants have filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) (ECF No. 19). In the motion, defendants cite the Court to documents in the file that are technically not part of the pleadings (ECF No. 19, page 1 citing to ECF No. 14; and ECF No. 19, page 5, citing to ECF No. 16, Exhibit 2). In addition, plaintiff attaches exhibits to his response to the motion (ECF No. 22, Exhibits).

1 Fed. R. Civ. P. 12 (d) provides:

2 If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are  
3 presented to and not excluded by the court, the motion must be treated as one for  
4 summary judgment under Rule 56. All parties must be given a reasonable  
5 opportunity to present all the material that is pertinent to the motion.

6 The Court is required either to refuse to consider the documents, or to convert the motion  
7 to dismiss into a motion for summary judgment. The Court will consider the documents.

8 Therefore, the Court will consider Defendants' motion for judgment on the pleadings as a motion  
9 for summary judgment.

10 If a motion to dismiss is converted to a motion for summary judgment, the parties must  
11 be given notice and an opportunity to amend or supplement the filings. *Graux v. Pulley*, 739 F.2d  
12 437, 438 (9th Cir. 1984).

13 The Court orders that any additional briefing or material plaintiff wishes to file must be  
14 filed on or before November 30, 2012. Defendants' reply must be filed on or before December  
15 21, 2012. The Court will consider Defendants' motion for summary judgment (ECF No. 19) on  
16 December 28, 2012. The Court asks that the Clerk's office re-note the motion for December 28,  
17 2012.

18 Dated this 26<sup>th</sup> day of October, 2012.

19   
20 J. Richard Creatura  
21 United States Magistrate Judge